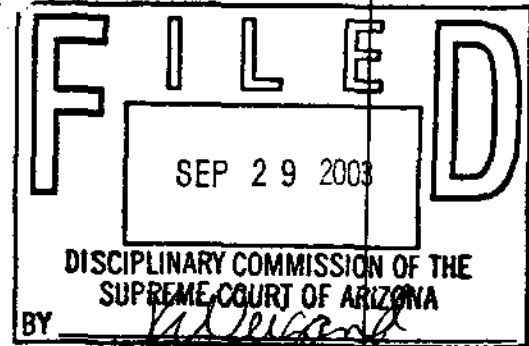


1 **Maret Vessella, Bar No. 019350**  
2 **Deputy Chief Bar Counsel**  
3 **State Bar of Arizona**  
4 **111 West Monroe, Suite 1800**  
5 **Phoenix, Arizona 85003-1742**  
6 **Telephone (602) 340-7272**



7  
8 **BEFORE THE DISCIPLINARY COMMISSION**  
9 **OF THE SUPREME COURT OF ARIZONA**

10 **IN THE MATTER OF A MEMBER )**  
11 **OF THE STATE BAR OF ARIZONA, )**

**File No. 01-2449**

12 **ROBERT G. CLARK, )**  
13 **Bar No. 002881 )**

**TENDER OF ADMISSIONS**  
**AND AGREEMENT FOR**  
**DISCIPLINE BY CONSENT**

14 **Respondent. )**

15 This Agreement is entered into between the State Bar of Arizona, through  
16 undersigned counsel and Respondent, through his counsel Robert J. Hooker, Esq.  
17 It is submitted pursuant to Rule 56(a), Ariz.R.S.Ct., and the Guidelines for  
18 Discipline by Consent issued by the Disciplinary Commission of the Supreme  
19 Court of Arizona. Respondent conditionally admits that he failed to adequately  
20 supervise a non-attorney staff member and failed to properly manage his client  
21 trust account. Respondent conditionally admits that his conduct violated ER 1.15,  
22 ER 5.3 and Rules 43 and 44, Ariz.R.S.Ct. The parties agree that the appropriate  
23 sanction is a censure, a term of probation and the imposition of costs. There were  
24 no issues of restitution presented in this case. The parties understand that this  
25

1 agreement is subject to review and acceptance by the Disciplinary Commission  
2 and the Supreme Court of Arizona.

3  
4 FACTS

5 1. Respondent is, and was at all times relevant hereto, a member of the  
6 State Bar of Arizona, having been admitted to practice law in Arizona on September  
7 25, 1971.

8  
9 File No. 01-2449

10 2. On December 12, 2001, the State Bar received a non-sufficient fund  
11 notice on Respondent's Bank One Arizona trust account. The notice indicated that  
12 on December 7, 2001, check number 2363, in the amount of \$200.00 attempted to  
13 pay against the account when the balance at the time was negative \$1,342.62.

14  
15 3. On December 21, 2001, the State Bar Staff Examiner wrote to  
16 Respondent requesting an explanation of the trust account overdraft notice.

17  
18 4. Respondent's office manager, Joyce Chambers, intercepted the State  
19 Bar's letters. Ms. Chambers did not advise Respondent of the State Bar letters. Ms.  
20 Chamber's answered the letters, however, making it appear that Respondent was  
21 providing a response to the State Bar's inquiries.

22  
23 5. Over the next few months, the State Bar wrote to Respondent and  
24 requested additional explanation and records. Again, Ms. Chambers responded as if  
25 the response was from Respondent.

6. After approximately seven months, on August 1, 2002, Respondent contacted the State Bar's Staff Examiner and explained that Ms. Chambers had left his employ. Chambers advised Respondent that the State Bar was engaged in an ongoing investigation. Prior to that time, Respondent was unaware of the State Bar's investigation.

7. On August 9, 2002, Respondent and his counsel met with the Staff Examiner and Bar Counsel and discussed the discrepancies identified in his trust account and submitted records. Respondent agreed to review all the information and documentation submitted by Ms. Chambers and provide clarification and any further explanation required. Respondent also agreed to provide any additional records or documents necessary to resolve outstanding issues.

8. The State Bar reviewed records from the time period of December 29, 2000 through December 31, 2001. Those records revealed that Ms. Chambers had been embezzling funds from Respondent. Generally, Ms. Chambers would use the money to pay her personal credit card bills and/or to pay Respondent's credit card bills that she had incurred in Respondent's name. In perpetrating the scheme, Ms. Chambers deposited earned and unearned client funds into Respondent's trust account. Ms. Chambers would then draw disbursements payable to Respondent either forging Respondent's endorsement or using a

1 signature stamp and then cash the checks. On other occasions, Ms. Chambers  
2 would disburse checks from the trust account directly to her creditors.

3       9.       Respondent allowed Ms. Chambers to have complete control of his  
4 trust account, bank statements, checks, deposit slips, account ledgers, credit card  
5 statements and signature stamp.  
6

7       10.      Respondent had no measures in place to routinely check that Ms.  
8 Chambers was in fact maintaining records and making appropriate disbursements.  
9

10      11.      Respondent's trust account bank records revealed the following:

- 11           a.      Respondent failed to properly safeguard client funds.  
12                   Specifically, funds belonging to Pat Prendergast and Mackie  
13                   Torres were misappropriated by Ms. Chambers.  
14
- 15           b.      Respondent failed to keep his funds separate from funds on  
16                   deposit in his trust account. Specifically, earned fees were  
17                   routinely deposited into the client trust account.  
18
- 19           c.      Respondent failed to maintain complete trust account records  
20                   for a period of five years.
- 21           d.      Respondent failed to exercise due professional care in the  
22                   maintenance of his client trust account.
- 23
- 24           e.      Respondent failed to maintain proper internal controls within his  
25                   office to adequately safeguard funds on deposit in the trust

1 account. Respondent failed to conduct a monthly reconciliation  
2 of his client trust account. Attached hereto as "Exhibit A" is a  
3 copy of the Staff Examiner's Report.  
4

5 12. Respondent filed a police report outlining Ms. Chambers' theft and  
6 embezzlement with the Tucson Police Department.

7 **CONDITIONAL ADMISSIONS**

8 Respondent conditionally admits his conduct violates Rule 42, Ariz.R.S.Ct.,  
9 specifically ER 1.15 and ER 5.3 and Rules 43 and 44, Ariz.R.S.Ct.  
10

11 **SANCTION**

12 Respondent and the State Bar of Arizona agree that on the basis of the  
13 conditional admissions contained herein the appropriate disciplinary sanctions are as  
14 follows:  
15

- 16 1. Respondent shall receive a censure for his conduct.  
17 2. Respondent shall be placed on probation for a period of six months.  
18

19 The period of probation will begin on the date that the final judgment  
20 and order is entered in this matter. During that probation, the State  
21 Bar's Staff Examiner will schedule a random review of Respondent's  
22  
23  
24  
25

1 office procedures and records limited to the operation and  
2 maintenance of his lawyer trust account.<sup>1</sup>

3 3. Respondent shall pay all costs and expenses incurred by the State  
4 Bar in these proceedings. A Statement of Costs is attached hereto as  
5 "Exhibit B".  
6

7 4. Respondent does not owe any restitution in this case. The State Bar  
8 identified two clients whose funds were converted by Ms. Chambers.  
9

10 (a) In the course of representing Pat Prendergast in a  
11 dissolution proceeding, the parties agreed to direct their  
12 state and federal tax return to Respondent for deposit into  
13 his trust account and distribution to the parties.  
14 Respondent received the returns and they were deposited  
15 into Respondent's trust account by Ms. Chambers. When  
16 Ms. Chambers disbursed the funds she wrote Mr.  
17 Prendergast's check for \$1,000.00 less than the amount to  
18 which he was entitled. During the course of the State  
19  
20  
21

---

22 <sup>1</sup> Respondent is not being required to attend the State Bar Trust Account Ethics Enhancement  
23 Program as he voluntarily attended "Managing your Trust Account" which was offered by the  
24 State Bar with instruction provided by the State Bar Staff Examiner. The Course included  
25 instruction on proper maintenance of the trust account, keeping and maintaining proper records,  
and hands-on accounting transactions. The State Bar believes that the term allowing for random  
review during the probation period will ensure that Respondent has implemented proper  
procedures with respect to the operation of the trust account and maintenance of corresponding  
records.

1 Bar's investigation, Respondent learned of the situation  
2 and contacted Mr. Prendergast. Respondent immediately  
3 issued Mr. Prendergast a check for \$1,000.00. (See,  
4 Exhibit "C")  
5

6 (b) Mackie Torres paid Respondent a flat fee of \$2,500.00  
7 for services relating to a probate matter. At some point  
8 during the representation, Ms. Chamber contacted Ms.  
9 Torres and advised that Respondent would need an  
10 additional \$750.00 for services. Ms. Torres provided the  
11 additional \$750.00 without contacting Respondent.  
12 Thereafter, Ms. Chambers again contacted Ms. Torres  
13 and requested an additional \$2,000.00. Ms. Torres  
14 provided the additional \$2,000.00 again without  
15 questioning Respondent. Unbeknownst to Respondent,  
16 Ms. Chambers collected the additional amounts from  
17 Ms. Torres. It appeared that Ms. Chambers converted  
18 those funds to her own use as there were no identifiable  
19 deposits into Respondent's trust account with respect to  
20 those specific funds. Prior to the investigation into this  
21 matter by the State Bar, Ms. Torres requested a refund of  
22  
23  
24  
25

1 the \$2,000.00 at the conclusion of her case and Ms.  
2 Chambers issued a check in that amount. During the  
3 investigation of this matter, Respondent learned of Ms.  
4 Chambers requests of Ms. Torres. Respondent returned  
5 an additional \$750.00 to Ms. Torres. See, Exhibit "D".  
6

7 In the event Respondent fails to comply with any of the foregoing terms, and  
8 information thereof is received by the State Bar of Arizona, Bar Counsel shall file a  
9 Notice of Noncompliance with the imposing entity pursuant to Rule 52(a)(6)(C),  
10 Ariz.R.S.Ct. The matter may be referred to a hearing officer to conduct a hearing at  
11 the earliest practical date, but in no event, more than thirty (30) days following  
12 receipt of said Notice. If the matter is referred to a hearing officer, the hearing  
13 officer shall determine whether the terms of probation have been breached and, if  
14 so, to recommend appropriate probation have been breached and, if so, to  
15 recommend appropriate action and response to such breach. If there is an allegation  
16 that Respondent failed to comply with any of the foregoing terms, the burden of  
17 proof shall be on the State Bar of Arizona to prove non-compliance by a  
18 preponderance of the evidence.  
19

20 Respondent conditionally admits that he has engaged in the conduct set forth  
21 above and the rule violations indicated, in exchange for the form of discipline as  
22 set forth above.  
23  
24  
25



1 Respondent, by entering into this agreement, waives his right to a formal  
2 disciplinary hearing that he would otherwise be entitled to pursuant to Rule 53(c)6,  
3 Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a hearing.  
4

5 Respondent is represented by counsel in these proceedings. Respondent  
6 waives all motions, defenses, objections, or requests which he has made or raised, or  
7 could assert hereinafter, if the conditional admissions and stated form of discipline  
8 are approved.  
9

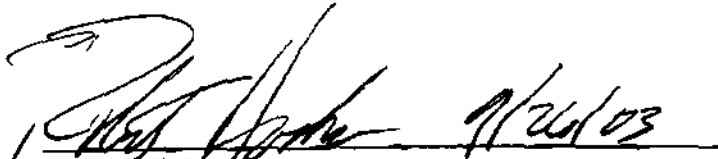
10 This Tender of Admissions and Agreement for Discipline by Consent will  
11 be submitted to the Disciplinary Commission for approval. Respondent  
12 understands that the Disciplinary Commission may order a hearing officer to  
13 conduct an evidentiary hearing, if necessary. Respondent further understands that  
14 the Disciplinary Commission may recommend rejection of this Agreement or may  
15 propose modifications. Respondent further understands the Disciplinary  
16 Commission must approve this Agreement and that this matter will become final  
17 upon judgment and order of the Supreme Court of Arizona. If the Agreement is  
18 rejected, the parties' conditional admissions are withdrawn.  
19  
20  
21  
22  
23  
24  
25

1 This agreement, with conditional admissions, is submitted freely and  
2 voluntarily and not under coercion or intimidation. I am aware of the Rules  
3 of the Supreme Court with respect to discipline and reinstatement.  
4

5 DATED this 25<sup>th</sup> day of September, 2003.

6  
7 

8 Robert G. Clark  
9 Respondent

10  
11  9/26/03

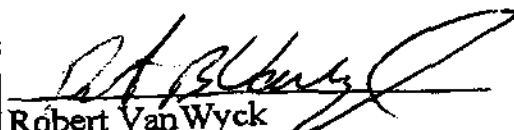
12 Robert J. Hooker  
13 Attorney for Respondent

14  
15 DATED this 29<sup>th</sup> day of September, 2003.

16  
17 

18 Maret Vessella  
19 Deputy Chief Bar Counsel

20  
21  
22 Approved as to form and content:

23  
24 

25 Robert Van Wyck  
Chief Bar Counsel

1 Original filed this 29 day of  
2 September, 2003 with:

3 Disciplinary Clerk of the Supreme Court  
4 Certification and Licensing Division  
5 1501 W. Washington, #104  
6 Phoenix, Arizona 85007-3329

7 Copy of the foregoing mailed this  
8 29 day of September, 2003 to:

9 Robert J. Hooker  
10 2830 North Swan Road, Suite 120  
11 Tucson, Arizona 85712  
12 Attorneys for Respondent

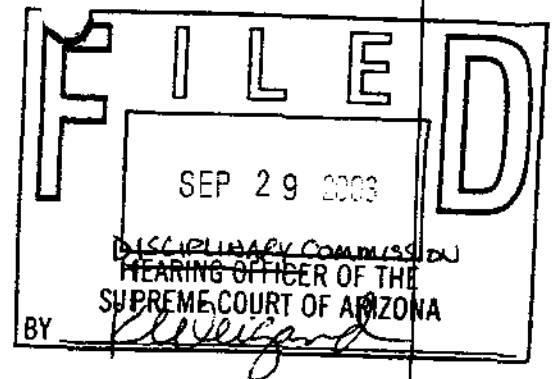
13 Copy of the foregoing hand delivered this  
14 29 day of September, 2003 to:

15 Lawyer Regulation Records Manager  
16 State Bar of Arizona  
17 111 West Monroe Street, Suite 1800  
18 Phoenix, Arizona 85003

19 by: 

20 MV:cs  
21  
22  
23  
24  
25

1 Maret Vessella, Bar No. 019350  
2 Deputy Chief Bar Counsel  
3 State Bar of Arizona  
4 111 West Monroe, Suite 1800  
5 Phoenix, Arizona 85003-1742  
6 Telephone (602) 340-7272



7 **BEFORE THE DISCIPLINARY COMMISSION**  
8 **OF THE SUPREME COURT OF ARIZONA**

9 IN THE MATTER OF A MEMBER )  
10 OF THE STATE BAR OF ARIZONA, )

File No. 01-2449

11 **ROBERT G. CLARK,** )  
12 Bar No. 002881 )

Respondent. )

**JOINT MEMORANDUM IN  
SUPPORT OF AGREEMENT  
FOR DISCIPLINE BY  
CONSENT**

13 The State Bar of Arizona, through undersigned counsel and Respondent,  
14 Robert G. Clark, represented by Robert J. Hooker, Esq., hereby submit their Joint  
15 Memorandum in Support of the Agreement for Discipline by Consent filed  
16 contemporaneously herewith.

18 As reflected in the Tender of Admissions and Agreement for Discipline by  
19 Consent, Respondent failed to adequately supervise his employee who had  
20 complete control of his lawyer trust account. The employee embezzled funds  
21 from Respondent, misused the trust account and failed to maintain required  
22 records. Respondent violated Rule 42, Ariz.R.S.Ct., specifically ER 1.15 and  
23 ER 5.3; Rules 43 and 44, Ariz.R.S.Ct.  
24  
25

1 The State Bar of Arizona and Respondent agree that Respondent shall be  
2 censured, placed on probation for a period of six months, and pay the costs incurred  
3 in this disciplinary proceeding. Respondent identified two clients who were entitled  
4 to a return of funds and has already repaid those individuals. Under those  
5 circumstances, no order of restitution is required in this agreement.  
6

7 In determining the appropriate sanction, the parties considered both the  
8 American Bar Association's *Standards for Imposing Lawyer Sanctions*  
9 ("Standards") and Arizona case law. The *Standards* provide guidance with  
10 respect to an appropriate sanction in this matter. The Court and Commission  
11 consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157, 791  
12 P.2d 1037, 1040 (1009); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274 (1994).  
13  
14

15 In determining an appropriate sanction, both the Court and the Commission  
16 consider the duty violated, the lawyer's mental state, the actual or potential injury  
17 caused by the misconduct and the existence of aggravating and mitigating factors.  
18  
19 *Matter of Tarlitz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

20 Given the conduct in this matter it was appropriate to consider *Standards* 4.1  
21 and 7.0. Suspension is generally appropriate when a lawyer knows or should know  
22 that he is dealing improperly with client property and causes injury or potential  
23 injury to a client. *Standard* 4.12. Suspension is appropriate for lawyers who are  
24 grossly negligent. An example of gross negligence would include failing to  
25

1 establish proper accounting procedures. See, Comments to *Standard* 4.12.  
2 Respondent had no established procedures to ensure that his employee was  
3 properly maintaining and operating his lawyer trust account. That particular failure  
4 led to the embezzlement of Respondent's funds and the misappropriation of two  
5 clients' funds.  
6

7 A lawyer's failure to supervise employees resulting in injury is considered  
8 under *Standard* 7.0. Reprimand (censure in Arizona) is generally appropriate when  
9 a lawyer negligently engages in conduct that is a violation of a duty owed to the  
10 profession, and causes injury or potential injury to a client, the public or the legal  
11 system. *Standard* 7.3. Courts have imposed reprimands on lawyers who are  
12 negligent in supervising their employees. See, Comments to *Standard* 7.3.  
13  
14

15 In the present case, Respondent knew or should have known that client  
16 property was being mishandled by his employee and at risk due to the lack of  
17 internal controls. Respondent abdicated all responsibility for the maintenance and  
18 operation of his lawyer trust account. Respondent's employee had complete  
19 control over all checks, bank statements, deposit slips, account ledgers, credit  
20 card statements and Respondent's signature stamp. However, Respondent  
21 enjoyed a a seventeen year employment relationship with his employee and had  
22 no reason to mistrust her. Under those circumstances, Respondent was negligent  
23 in his failure to properly supervise his employee.  
24  
25

1 As the *Standards* do not account for multiple charges of misconduct, the  
2 ultimate sanction imposed should at least be consistent with the sanction for the  
3 most serious instance of misconduct among a number of violations. *Standards* at  
4 pg. 6, *Matter of Redeker*, 177 Ariz. 305, 868 P.2d. 318 (1994)

6 Based on the foregoing, the presumptive sanction for the admitted conduct  
7 is a term of suspension. After determining the presumptive sanction, it is  
8 appropriate to evaluate factors enumerated in the *Standards* which would justify  
9 an increase or decrease in the presumptive sanction.

11 Substantial mitigation, as is present in this case, can justify a decrease in  
12 the presumptive sanction. Respondent was admitted to practice law in the State  
13 of Arizona in 1971 and has served the public for thirty-two years without any  
14 discipline. *Standard 9.32(a)*. The conduct giving rise to the instant matter was not  
15 the product of a selfish or dishonest motive. *Standard 9.32(b)*. When Respondent  
16 learned of Ms. Chambers' actions he immediately contacted the State Bar and made  
17 every effort to determine the nature and extent of Ms. Chambers' misconduct. In  
18 doing so, he answered every inquiry of the State Bar. Respondent obtained and  
19 provided records and offered detailed explanations. *Standard 9.32(e)* In the  
20 process of rendering a detailed account of what occurred in his office, Respondent  
21 identified two clients who had funds misappropriated by Ms. Chambers.  
22 Respondent promptly contacted the individuals and made full restitution.

1 Additionally, in June 2003, Respondent voluntarily attended a State Bar sponsored  
2 continuing legal education course entitled, "Managing your Trust Account."  
3 *Standard 9.32(d)*. Throughout this matter, Respondent has demonstrated that he  
4 recognizes the seriousness of the situation and his remedial actions were consistent  
5 with an interest in removing the potential for reoccurrence. *Standard 9.32(1)*  
6 Substantial experience in the practice of law is usually found to be an aggravating  
7 factor. However, that factor can be offset by the corresponding fact that the lawyer  
8 has no prior disciplinary record during that same period of time. *Matter of*  
9 *Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994). Therefore, the two factors combined  
10 may be considered a mitigating factor. *Matter of Marce*, 177 Ariz. 25, 867 P.2d 845  
11 (1993). In this case, Respondent has substantial experience in the practice of law  
12 however, he has never been the subject of prior discipline and those factors  
13 combined should be considered in mitigation of the presumptive sanction.  
14  
15  
16

17 There are no aggravating factors which should be considered in this matter.  
18 As such, the mitigation present in this matter justifies a downward deviation from  
19 a suspension to a censure.  
20

### 21 PROPORTIONALITY

22 To have an effective system of professional sanctions, there must be  
23 internal consistency, and it is appropriate to examine sanctions imposed in cases  
24 that are factually similar. *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567  
25



1 (1994), (quoting *In re Wines*, 135, Ariz. 203, 207 (1983)). However, the  
2 discipline in each case must be tailored to the individual case, as neither  
3 perfection nor absolute uniformity can be achieved. *Matter of Riley*, 142 Ariz.  
4 604, 615 (1984).

6 There are two cases which are instructive with respect to this type of  
7 misconduct. In *Matter of Collins*, SB-97-0058-D (July 2, 1997), the lawyer was  
8 admitted to practice in Arizona in 1986 and was also licensed in California.  
9 While living in California, Collins took over the Arizona practice of Anthony  
10 Leone. The main practice involved debt collection. Leone had employed an  
11 officer manager for collections matters and when Collins took over, the office  
12 manager remained as collections manager in an independent contractor capacity.  
13 Although Collins primarily practiced in California, he was occasionally in the  
14 Arizona office and maintained daily contact by telephone. The office manager  
15 and bookkeeper were given signatory authority of the firm's accounts to facilitate  
16 the collection and transfer of funds into the appropriate accounts. Within the first  
17 three months funds collected for six clients were embezzled by the office staff  
18 without Collins' knowledge. When Collins learned of the misappropriation he  
19 took immediate action by notifying the State Bar, cooperating with the authorities  
20 in the prosecution of the office staff and made complete restitution to the affected  
21 clients. The case presented significant mitigation and Collins received a censure  
22  
23  
24  
25

1 for his failure to supervise his non-lawyer staff and his failure to safeguard client  
2 property.

3 In *Matter of Heldenbrand*, SB-99-0089-D (January 13, 2000), Heldenbrand  
4 was negligent in supervising his employees and he failed to safeguard client  
5 property. Heldebrand acknowledged that he should not have delegated  
6 administrative responsibility for client files and their accounts. Heldenbrand  
7 consented to a censure for violations of ER 1.3, ER 1.4, ER 1.15, ER 5.3, ER 5.4,  
8 ER 8.4 and Rules 43 and 44, Ariz.R.S.Ct. There were no aggravating factors  
9 present in this matter and five factors present in mitigation. Heldenbrand was  
10 censured and placed on probation for a period of two years.  
11  
12

13 The above-cited cases consider similar conduct which resulted in the  
14 imposition of censures. Based on the foregoing, it appears that the recommended  
15 sanction is within the range of appropriate sanctions for the admitted conduct.  
16

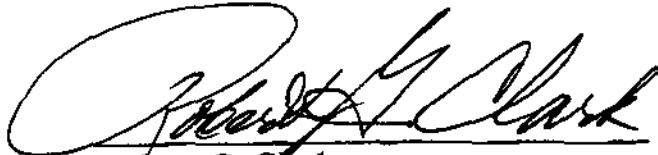
17 The agreed upon sanction is consistent with other similar cases and serves to  
18 instill confidence in the public and maintain the integrity of the Bar.  
19  
20

## 21 CONCLUSION


22 The objective of lawyer discipline is not to punish the lawyer, but to protect  
23 the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz.  
24 106, 708 P.2d 1297.(1985). Recognizing it is the prerogative of the Disciplinary  
25

1 Commission to determine the appropriate sanction, the State Bar and Respondent  
2 assert the objectives of discipline will be met by the imposition of the proposed  
3 sanction of a censure, two years probation and costs.  
4

5 DATED this 25<sup>th</sup> day of September, 2003.

6  
7 

8 Robert G. Clark  
9 Respondent

10  
11  9/26/03

12 Robert J. Hooker  
13 Attorney for Respondent

14  
15 DATED this 29<sup>th</sup> day of September, 2003.

16  
17 

18 Maret Vessella  
19 Deputy Chief Bar Counsel

20  
21  
22 Approved as to form and content:

23  
24 

25 Robert Van Wyck  
Chief Bar Counsel

1 Original filed this 29 day of  
2 September, 2003 with:

3 Disciplinary Clerk of the Supreme Court  
4 Certification and Licensing Division  
5 1501 W. Washington, #104  
6 Phoenix, Arizona 85007-3329

7 Copy of the foregoing mailed this  
8 29 day of September, 2003 to:

9 Robert J. Hooker  
10 2830 North Swan Road, Suite 120  
11 Tucson, Arizona 85712  
12 Attorneys for Respondent

13 Copy of the foregoing hand-delivered this  
14 29 day of September, 2003 to:

15 Lawyer Regulation Records Manager  
16 State Bar of Arizona  
17 111 West Monroe Street, Suite 1800  
18 Phoenix, Arizona 85003

19 by: 

MV:cs